STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 19, 2016)

DOROTHY ANN GIRARD, MIGUEL MILICH, and JOAN MILICH,	:	
Plaintiffs/Appellants	:	
vs.	:	**C.A. No. PC-2015-1264**
THE ZONING BOARD OF THE TOWN OF BARRINGTON, and LINDA BURTON,	:	
Defendants/Appellees	:	

DECISION

TAFT-CARTER, J. Following remand, this matter is before the Court for decision on the appeal of Plaintiffs—Dorothy Ann Girard, Miguel Milich, and Joan Milich—of the March 10, 2015 decision of the Zoning Board of the Town of Barrington, which approved the request of Defendant Linda Burton (Defendant, Applicant, or Appellee) for dimensional variances for her property at 296 Narragansett Avenue in Barrington, Rhode Island. The Zoning Board of the Town of Barrington and Applicant (Defendants or Appellees) opposed the appeal of the decision. On November 2, 2015, this Court remanded the matter to the Zoning Board of the Town of Barrington for further proceedings. Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

I

Facts and Travel

Applicant, the owner of the property located at 296 Narragansett Avenue in Barrington, submitted an application to the Town of Barrington for dimensional variances on January 14, 2015. The structures at 296 Narragansett Avenue, Plat 1, Lot 281 are a 736 square foot single-

family residence with a 644 square foot detached garage. R. at 9, 12. The residence currently has two bedrooms, one bathroom, a living area, and a kitchen. Applicant sought to raise the garage roof to make a second-floor living space over the garage and connect said living space to the current residence.

Applicant seeks relief from Section 185-17 of the Barrington Zoning Ordinance, which pertains to dimensional, area, and lot coverage requirements. The application requested dimensional variances for exceeding 1) front yard setback; 2) side yard setback; 3) rear yard setback; 4) lot coverage; and 5) construction within 100 feet of any water body. Id. at 17, 21. The home and garage, built in 1915, are nonconforming structures. The sole increase in the request is related to the lot coverage—from 35.8% to 37.7%. Id. at 18. This increase resulted from the building of a "breezeway" that would connect the current living space to the proposed living space to be built above the garage. Id. at 9. Relief was also sought from Section 185-22 of the Barrington Zoning Ordinance, which provides that "no building, structure or sign may be located . . . within 200 feet in the case of flowing water bodies in excess of 10 feet in width as provided by the state Freshwater Wetlands Act," as her property "is approximately one hundred and twelve (112') feet from the nearest body of water." Id. at 21.

In addition to her application, Defendant attached a 200-foot radius map, a list of abutters, and the proposed plan for the additions to the existing structures. Id. at 14, 16, 24. Defendant also provided a narrative with the application explaining her medical issues resulting from psoriatic arthritis that result in her inability, at times, to climb stairs or walk. Defendant's treating physician recommended that she live in a one-story house. Id. at 17-18. A diagram of the residence (existing and proposed) illustrates that as the garage is below the grade of residence, and the proposed construction above the garage will be on the same level as the current residence, the proposed

structure will have all living space on one level (as now). Id. at 28-30. Defendant further attached a note from a physician, Mark C. Fisher, MD, MPH, of Massachusetts General Hospital in Boston, confirming her diagnosis. Id. at 23.

The Zoning Board of the Town of Barrington (Zoning Board) held a public hearing on February 19, 2015 and approved the application with a vote of five to zero (5-0). At the hearing, several people testified in favor of the application. Defendant's attorney, Ms. Stephanie Federico, explained Applicant's medical issues caused by psoriatic arthritis, and she also explained the proposed construction. She stated that Applicant's condition was worsening, and climbing stairs was becoming increasingly difficult. She also noted that if the application were approved, all of the living space would (as it is now) be on one level, and she opined that the proposed addition would make the residence more similar to other residences in the area. Tr. 4:16-7:1, Feb. 19, 2015. David Boyce of the Rhode Island Conservation Commission testified on behalf of the Conservation Commission. He expressed support for the application, with the condition that the building materials are to be permitted only on the Narragansett Street side of the property. He stated that at their last meeting, the Conservation Commission unanimously approved Defendant's application. Id. at 12:22-13:3. Additionally, a neighbor of the Applicant, Janice Lee Kelly, testified that the proposed construction would not alter the general character of the neighborhood. Id. at 36:4-38:15. Specifically, she stated that the proposed addition would be "in keeping both in scale and in style with the character of both the house and the neighborhood." Id. at 37:22-24.

The Zoning Board also heard from opponents of the application. Robert Healy, attorney for the Plaintiffs, argued that the expansion would inhibit the views and privacy of the neighbors, because the expansion is upward in a neighborhood where many of the residences do not conform

to setback requirements and are thus in closer proximity than those normally found in a residential area. Id. at 24:7-35:25. Plaintiff Girard testified to her concerns about her view being obstructed and her privacy being infringed because the proposed additional living space would be adjacent to her bedroom. Id. at 45:10-48:21. Another neighbor, Sandra Wyatt, testified as to her concerns that the construction would be in close proximity to Narragansett Bay, and that it would impair the Girards' light and privacy because the proposed additional living space would be in close proximity to the Girards' residence. Id. at 38:19-45:6.

The Zoning Board issued its decision on March 10, 2015 and incorporated the minutes of the meeting as findings of fact. Plaintiffs filed a timely appeal on March 30, 2015. The Zoning Board and Applicant filed separate objections to the appeal.

On December 18, 2015, the Zoning Board rendered a decision that contained findings of facts and conclusions of law in accordance with the statutory provisions of § 45-24-69. This decision was recorded in the Town of Barrington land evidence records on December 21, 2015, and a copy was sent to the Court the following day. See Second Decision of Zoning Board (dated December 21, 2015).

II

Standard of Review

Pursuant to § 45-24-69, the Superior Court has jurisdiction to review zoning board decisions. The statute provides as follows:

> "The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

> "(1) In violation of constitutional, statutory, or ordinance provisions;
> "(2) In excess of the authority granted to the zoning board of review by statute or ordinance;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error of law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 45-24-69(d).

The Superior Court must "examine the whole record to determine whether the findings of the zoning board were supported by substantial evidence." Lloyd v. Zoning Bd. of Review for Newport, 62 A.3d 1078, 1083 (R.I. 2013) (citing Apostolou v. Genovesi, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978)). Substantial evidence is defined as "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means [an] amount more than a scintilla but less than a preponderance." Iadevaia v. Town of Scituate Zoning Bd. of Review, 80 A.3d 864, 870 (R.I. 2013) (citing Pawtucket Transfer Operations, LLC v. City of Pawtucket, 944 A.2d 855, 859 (R.I. 2008) (internal quotation marks omitted)). If the Court finds that the zoning "board's decision was supported by substantial evidence in the whole record," then the zoning board's decision must stand. Lloyd, 62 A.3d at 1083. However, if the decision of the board does not contain sufficient findings of fact and conclusions of law for our Court to adequately review the decision, the Court will remand the matter to the board so that it may issue a ruling that is complete and susceptible to judicial review. See Irish P'ship v. Rommel, 518 A.2d 356, 359 (R.I. 1986) (matter was returned to the zoning board of review).

III

Law of Use and Dimensional Variances

In their supplemental brief, Plaintiffs contend that the proposed additional living space above the garage "would naturally require a use variance in that the [garage] structure is a pre-

existing, non-conforming 'use' of a structure." Plaintiffs therefore contend that the proposed construction would require a use variance. Contrarily, Appellees maintain that the Zoning Board correctly applied the standard for a dimensional variance. Appellees thus contend that the Zoning Board properly granted a dimensional variance following the determination of the Zoning Board that the Applicant satisfied the requirements of §§ 45-24-41(d)(1-4) and (e)(2).

The Zoning Board examined all five of the aforementioned requirements for a dimensional variance in its decision on remand. Sec. 45-24-41(e)(1), the applicable statute for a **use** variance, requires a showing of a loss of all beneficial use. (Emphasis added.) A use variance is required when the owner of a property seeks to use said property for a use other than one permitted by the applicable zoning ordinance. See Lischio v. Zoning Bd. of Review of North Kingstown, 818 A.2d 685, 692 (R.I. 2003). The Zoning Board, in its original answer to the appeal, addressed the issue of whether the proposed addition would require a dimensional variance or a use variance. Specifically, the Zoning Board explained in its Brief in Opposition to the Appeal, "The existing garage will remain a garage . . . The new living space above the garage, and the breezeway attaching the house to the garage will be part of the living area of the house, and . . . only one contiguous structure will exist on the property." Therefore, the Zoning Board reasoned that the use of the garage itself would not change, even though the (currently unused) space above the garage would be a living area. As noted below, § 185-13 of the Barrington Zoning Ordinance defines a garage as a structure that may house up to "four motor vehicles," and does not contemplate such structure being used for living space. However, a garage may be attached to the residence; such a structure is permitted "in connection with a dwelling" according to the applicable Barrington Zoning Ordinance.

Sec. 185-13 of the Barrington Zoning Ordinance lists "Permitted accessory uses and structures." It defines a garage as a permitted use or structure, and provides in pertinent part that a garage must not house "more than four motor vehicles, which shall not include more than one vehicle owned by a nonresident of the premises[.]" The Barrington Zoning Ordinance provides for a garage "in connection with a dwelling" and does not require that a garage be a structure separate from the residence. The Court notes that the garage is currently a detached two-car garage and will remain a two-car garage regardless of whether the application is approved. R. at 9. However, the Plaintiffs object to Applicant seeking to build a living space above this existing garage.

The Zoning Board determined the variance sought to be dimensional rather than use. Id. There is nothing in the record to indicate that any of the parties, at the time of the hearing of the Zoning Board, considered the proposed construction to be a change in 'use.' See R. at 2-4 and at 7-13. In Cohen v. Duncan, 970 A.2d 550, 553 (R.I. 2009), our Supreme Court held that the Inn at Cliff Walk did not change the "use" of its hotel (The Chanler) when it "reconstructed decks, added stairs and courtyards, and relocated parking" at the hotel. The Court held that the Superior Court erred in reversing the favorable decision of the zoning board, finding "nothing in the record that would support a conclusion that these renovations added to the use, extended the use, expanded the use, or changed the use" of the structure. Id. at 568. Here, Plaintiffs contend that the "use" of the garage is being changed to also include living space. However, Appellees maintain that the area currently being used as a garage will still be used as a garage, and the house will be expanded with additional living space above the garage.

This Court concludes that while the application seeks to build living space above the garage, the Zoning Board was not clearly erroneous in determining that the garage itself will not

undergo a change in use, but constituted the expansion of a nonconforming structure. Thus, the proposed construction required a dimensional variance, not a use variance, and the Zoning Board's application of the dimensional variance standard was not affected by error of law.

IV

Medical Evidence

Plaintiffs argue that the Zoning Board incorrectly considered the medical evidence of record when it approved Appellee's request for a dimensional variance. Specifically, Plaintiffs argue that the Zoning Board erred when it considered the request for relief in light of the Appellee's medical condition. In their supplemental brief, Plaintiffs assert that the note from Ms. Burton's treating physician "was not a sworn affidavit nor was it accompanied by any testimony." Appellees assert the "raise-or-waive" rule, which was explained by our Supreme Court in Roe v. Gelineau, 794 A.2d 476, 482 (R.I. 2002), applies. In Gelineau, our Supreme Court states: "It is well established that, under the raise-or-waive rule, this Court refrains from reviewing issues not raised in the trial court." Id. (citing State v. Breen, 767 A.2d 50, 57 (R.I. 2001)). Accordingly, Appellees maintain, Plaintiffs should be barred from pursuing this claim because they did not question the validity of the note from Doctor Fisher at the hearing of February 19, 2015, though it was included in the record of the Zoning Board. See R. at 9-10, 23. Our Supreme Court "has not explicitly held that the raise-or-waive doctrine applies to administrative proceedings[.]" East Bay Cmty. Dev. Corp. v. Zoning Bd. of Review of Barrington, 901 A.2d 1136, 1153 (R.I. 2006). While this Court is not persuaded that the "raise-or-waive" rule applies to our review of the decision of a zoning board (as opposed to the Supreme Court review of a lower court decision, see Gelineau, 794 A.2d at 482), this Court

nonetheless finds the Zoning Board's consideration of the medical condition of the Applicant was clearly erroneous.

There was no challenge to the note from Dr. Fisher being admitted at the hearing, and there is nothing in the record that indicates the Plaintiffs sought additional time to question its contents. While those who spoke in opposition expressed concerns about "views" and "privacy," with one witness expressing opposition based on "proximity to the wetlands," the record does not indicate any expression of opposition to the note of Dr. Fisher. (R. at 9-10). Further, there is nothing in the record that indicates the Zoning Board had any questions or concerns regarding the necessity of further inquiry into the medical condition of the Appellee. It is well-settled that a zoning board "is not required to comply strictly with the rules of evidence." Caswell v. George Sherman Sand & Gravel Co., Inc., 424 A.2d 646, 648, n.4 (R.I. 1981) (citations omitted). Accordingly, there is nothing in the record that indicates that the Plaintiffs were substantially prejudiced by the admission of the note in this administrative hearing. See R. at 9-10.

However, the Zoning Board did act in excess of its statutory authority in considering the Applicant's medical condition in its evaluation of her application here. An applicant seeking a dimensional variance must demonstrate that "the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(16)." Sec. 45-24-41(d)(1). The applicable subsection provides that zoning ordinances shall provide for "reasonable accommodations in order to comply with the Rhode Island Fair Housing Practices Act, chapter 37 of title 34; the United States Fair Housing Amendments Act of 1988 (FHAA); the Rhode Island Civil Rights of Persons with Disabilities Act, chapter 87 of title 42; and the

Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq." Sec. 45-24-30(16). While the Zoning Board had before it evidence that the Applicant suffers from psoriatic arthritis, there was no evidence before the Zoning Board that the Applicant suffers from a disability that would satisfy the aforementioned state and federal statutes.

The record also reflects that the Zoning Board's consideration of the medical condition of the Applicant was not the primary basis on which the Zoning Board found that Appellee met her burden of demonstrating that denial of her application would result in "more than a mere inconvenience." Sec. 45-24-41(e)(2). Substantial rights of the Plaintiffs were not thereby prejudiced. The Zoning Board noted that the living space of 736 sq. ft. is unusually small, and it properly concluded that the hardship from which the Applicant sought relief was "due to the unique characteristics of the subject land . . . and not to the general characteristics of the surrounding area[.]" Sec. 45-24-41(d)(1). In deliberation, the Zoning Board found "the applicant has met the standard of [Section] 185-71 [of the Barrington Zoning Ordinance], that the hardship to be suffered by the owner of the subject property shall amount to more than a mere inconvenience . . . it's definitely within reason to provide more living space[.]" Tr. at 55:24-56:4, Feb. 19, 2015.

V

Decision of the Zoning Board

For a zoning board to approve a dimensional variance, it must find that an applicant satisfied all of the requirements of §§ 45-24-41(d)(1-4) and (e)(2). Sec. 45-24-41(d)(1) provides that an applicant seeking a dimensional variance must show that the hardship he or she seeks to relieve is "due to unique characteristics of the subject land . . . and not to the general characteristics of the surrounding area." Sec. 45-24-41(d)(2) requires that the applicant

demonstrate that the hardship from which relief is sought was not caused by the applicant, and that the relief requested is not being sought for financial gain. Additionally, § 45-24-41(d)(3) requires that an applicant demonstrate that the proposed construction would not "alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based[.]" Sec. 45-24-41(d)(4) further requires that the board be persuaded that the relief sought is "the least relief necessary" to alleviate the hardship. Finally, § 45-24-41(e)(2) requires that an applicant demonstrate the hardship that will result if the application is not approved is greater than a "mere inconvenience."

There is substantial evidence supporting the Zoning Board's finding that the Applicant satisfied the aforementioned statutory requirements for a dimensional variance; that is, §§ 45-24-41(d)(1-4) and (e)(2). First, the Zoning Board found that the hardship from which the Applicant sought relief was due to unique characteristics of the property that are not typical for the surrounding area. See § 45-24-41(d)(1). Specifically, the Zoning Board found that the house, built in 1915, is much smaller (736 sq. ft.) than a house that would typically be constructed today. Further, the Zoning Board noted that the 3850 sq. ft. lot is considerably smaller than the current minimum lot size for a single-family home being constructed in Barrington (10,000 sq. ft.). Decision at 2, Dec. 18, 2015. Therefore, the Zoning Board's determining that there were limited possibilities for the Applicant to expand her residence was supported by the competent evidence of the record.

The Zoning Board also found that the hardship was not due to any action by the Applicant, as the residence was built in 1915, well before the enactment of current zoning regulations, and well before the Applicant purchased the residence in 2014. Id. Our Supreme Court has held that "a mere showing of a more profitable use that would result in a financial

hardship if denied does not satisfy the requirements" for the granting of a variance. R.I. Hosp. Trust Nat'l Bank v. E. Providence Zoning Bd. of Review, 444 A.2d 862, 864 (R.I. 1982). Here, the Zoning Board found that there was no evidence that the Applicant was seeking to expand the structure for financial benefit. See § 45-24-41(d)(2). Rather, they found that she simply sought to expand the current living space so that she and her two children could more comfortably live in the structure. Decision at 2-3, Dec. 18, 2015. Thus, the decision of the Zoning Board that the Applicant satisfied the requirements of § 45-24-41(d)(2) was supported by the reliable and substantial evidence of the record.

The Zoning Board examined the surrounding area and noted the presence of "a number of two-story dwellings" and "a number of garages attached to residences." Id. at 3. The Zoning Board also noted that the proposed expansion would leave the structure "lower than other properties in the neighborhood." Id. Accordingly, the Zoning Board's finding that approving the requested variance would "not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based" is not clearly erroneous. Id; see § 45-24-41(d)(3).

In its decision, the Zoning Board also accepted the recommendation of the Conservation Commission of Barrington, which "voted unanimously to recommend approval of the application, conditioned on construction materials being stored street-side (the side further from Narragansett Bay)." Decision at 3, Dec. 18, 2015. The Zoning Board also noted that the Conservation Commission "commented that the proposed addition will be constructed on a concrete pad already in place; that no soil disturbance is proposed; and that the proposed addition is further from the water than the existing structure." Id.

The Zoning Board additionally addressed the concerns of neighboring property owners who expressed opposition. Specifically, the Zoning Board noted that "Rhode Island law does not recognize a landowner's right to view." Id. Our Supreme Court has noted that "[u]nder the common law as it is generally applied in America an adjacent proprietor has no right to light and air coming to him across the land of his neighbor." Musumeci v. Leonardo, 77 R.I. 255, 260, 75 A.2d 175, 177 (1950) (citing Trustees Mathewson St. M. E. Church v. Shepard, 22 R.I. 112, 46 A. 402 (1900)). While the Zoning Board further noted that "Rhode Island law [does not] recognize a right of privacy in the zoning context," it stated that it "[n]evertheless . . . finds that the granting of the variance will not unreasonably interfere with the privacy expectations of the neighboring property owners, given the historic density of the neighborhood." Decision at 3, Dec. 18, 2015.

Additionally, the Zoning Board found that the proposed relief was "the least relief necessary" because of the aforementioned limitations on expansion of an undersized structure on an undersized parcel of land. Id; see § 45-24-41(d)(4). The structure already covers more of the parcel than would be permitted for a new construction—35.8% vs. 25%. The current structure is also nonconforming as to front yard setback (3.65 feet where 25 feet is currently required), side yard setback (4.12 feet where 9 feet is currently required) and rear yard setback (6.35 feet where 20 feet is currently required). R. at 17. The proposed addition, since it would be built over the existing garage, would not increase nonconformity with regard to setback requirements. Decision at 3, Dec. 18, 2015. As noted above, the property already is not compliant with current zoning requirements regarding setbacks and maximum lot coverage. The only increase in nonconformity would be a small increase in lot coverage—35.8% to 37.7%. R. at 17; see also Decision at 3, Dec. 18, 2015. In its analysis, the Zoning Board applied Section 185-33 of the Barrington Zoning

Ordinance, which provides that "[a] legal nonconforming structure shall not be enlarged or extended unless a dimensional variance is obtained . . ." Therefore, the decision of the Zoning Board that the Applicant satisfied the requirements of § 45-24-41(d)(4) was supported by the reliable and substantial evidence of the record.

Finally, the Zoning Board found that the hardship that would result if the application were not to be granted to be more than a "mere inconvenience," as is required by Rhode Island law. See § 45-24-41(e)(2). The property currently has two bedrooms, a bathroom, a living area, and a kitchen. Decision at 2, Dec. 18, 2015. The Zoning Board found that the proposed addition would "result in a reasonably sized residence for the neighborhood." Id. at 3. If the proposed variance were denied, the Applicant's lack of living space would, the Zoning Board found, result in more than mere inconvenience. Id. at 3-4.

In DiDonato v. Zoning Bd. of Review of Johnston, 104 R.I. 158, 164, 242 A.2d 416, 420 (1968), our Supreme Court held that a perceived need for more living space does not satisfy the requirement that an applicant seeking a dimensional variance must demonstrate that denial would result in a hardship that is "more than a mere inconvenience." The Court found that the applicant, while demonstrating that he would be denied reasonable use of his property if he were not permitted to build a single-family residence on the lot at issue, did not demonstrate that he would suffer more than a mere inconvenience if he were not permitted to build a residence that required a variance from the frond-yard and side-yard setback requirements of the applicable zoning ordinance. Specifically, the Court held that "petitioner has shown merely that he would suffer a personal inconvenience in having to house his family in a dwelling which must conform to the lot-line restrictions imposed by the ordinance. He has failed to establish that the ordinance places more than a mere inconvenience upon him." Id.

The statute governing dimensional variances requires an applicant seeking such variance to demonstrate that denial of the relief requested would amount to "more than a mere inconvenience." See § 45-24-41(e)(2). Similar to the applicant in DiDonato, the Applicant in the present case presented evidence that she and her family would be more comfortable in a larger residence. However, in DiDonato, the applicant was seeking to build a residence that would require a variance "from the front-yard and side-yard restrictions imposed by the ordinance," and he was seeking to build such a residence on a vacant lot. DiDonato, 104 R.I. at 164, 242 A.2d at 420. Here, the Applicant is faced with a legal nonconforming structure on a lot that is smaller than normal for the area (3850 sq. ft.). R. at 12-13. Thus, here, the Zoning Board's finding there was no other alternative for the Applicant in constructing "a reasonably sized residence for the neighborhood" is not in excess of their statutory authority. Decision at 3, Dec. 18, 2015. The Court therefore concludes that the Zoning Board was not clearly erroneous in determining that the Applicant satisfied the requirement of § 45-24-41(e)(2) that denial of the requested relief would amount "to more than a mere inconvenience."

In the present case, the Zoning Board reviewed the evidence presented at the February 19, 2015 hearing. The Zoning Board also addressed all five conditions that the Applicant must satisfy in order to be granted a variance pursuant to §§ 45-24-41(d)(1-4) and 45-24-41(e)(2). The Zoning Board explained how it concluded that the Applicant satisfied the aforementioned conditions in its decision of December 18, 2015, in which it addressed all five of the aforementioned statutory provisions, and it explained how the Applicant satisfied them. This Court therefore finds that the findings of the Zoning Board were supported by substantial evidence, and they were not clearly erroneous, nor were they based on unlawful procedure. See Lloyd, 62 A.3d at 1083.

VI

Conclusion

This Court has reviewed the entire record before it. A thorough review of the second decision of the Zoning Board reveals substantial evidence to support the Zoning Board's conclusion that the Applicant was able to satisfy the requirements of §§ 45-24-41(d)(1-4) and 45-24-41(e)(2). The Zoning Board's decision on said application was thus not in excess of its statutory authority. The Court therefore finds that the decision of the Zoning Board to approve the application is supported by the reliable, probative, and substantial evidence on the record, and is not an abuse of discretion, clearly erroneous, or affected by error of law. Substantial rights of the Plaintiffs have not been prejudiced. Accordingly, the December 18, 2015 decision of the Zoning Board is affirmed. Counsel shall prepare appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Dorothy Ann Girard, et al. v. The Zoning Board of the Town of Barrington, et al.**
CASE NO:	**PC-2015-1264**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 19, 2016**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**John R. Bernardo, III, Esq.**
For Defendant:	**Stephanie L. Federico, Esq.** **Michael A. Ursillo, Esq.** **Amy H. Goins, Esq.**